IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 297 of 1994
with
INCOME TAX REFERENCE Nos. 3, 4, 12, 13, 17, 20, 138, 139, 140, 141, 215, 216, 217, 218, 219 of 1995
(sixteen matters)

For Approval and Signature:

HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

COMMISSIONER OF INCOME-TAX

Versus

DHARTI ENTERPRISES

Appearance:
1. INCOME TAX REFERENCE No. 297 of 1994
MR MANISH R BHATT for Petitioner No. 1
NOTICE UNSERVED for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE A.M.KAPADIA
Date of decision: 22/01/2004

COMMON ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE M.S.SHAH)

In all these references, the following common question of law has been referred for our opinion :-

"Whether the Appellate Tribunal is right in law and on facts in holding that provisions of sec. 167A were not applicable in the present case and further directing that the assessee should be taxed at appropriate rate considering it as having determinate shares ?"

2. We have heard Mr MR Bhatt, learned counsel for the revenue. Though the respondent-assessees are not served, we thought it fit not to wait till the service is effected on the respondent-assessees as the questions referred in these references are required to be answered in favour of the assessee and against the revenue.

3. All the facts in the present group of references are similar to the facts in Income-tax Reference No.137 of 1995 where an identical question of law was referred for our opinion. In the said reference, by our separate judgment rendered today, we have answered the question in the affirmative i.e. in favour of the assessee and against the revenue by holding that the provisions of Section 167A were not applicable as the individuals who were members of the concerned AOP had specific shares and that although the clauses in the trust deed provided for admission of new members, in view of the fact that throughout the existence of the concerned AOP, there was no change in membership, the provisions of Section 167A were not attracted merely on account of the possibility of admission of new members at a future date.

4. Since the facts in the present group of references are identical except the change in the name of the AOP and the names of the individual members, we apply the ratio of the judgment in the above numbered reference and accordingly answer the questions referred in all these references in the affirmative i.e. in favour of the assessee and against the revenue.

All these references accordingly stand disposed of.

(M.S. Shah, J.)

(A.M. Kapadia, J.)

sundar/-